



Conference of the States Parties to the United Nations Convention against Corruption

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Conference of the States Parties to the United Nations Convention against Corruption

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Item 2 of the provisional agenda*

**Review of implementation of the United Nations
Convention against Corruption**

Implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption (review of articles 40-42)

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption by States parties under review in the first, second and third years of the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 3/1.

* CAC/COSP/2013/1.



I. Review of implementation of chapter III of the United Nations Convention against Corruption

Bank secrecy, criminal record and jurisdiction

1. In the review of the implementation of chapter III, it was observed that in most jurisdictions, bank secrecy did not present significant issues, even in cases where bank secrecy rules were in place, although issues with regard to the lifting of bank secrecy were noted in a few jurisdictions. Most notably, in one case, investigators had difficulties in trying to obtain the lifting of bank secrecy owing to the particularly high standards of proof required by the supervising judge. In addition, concerns were noted about the lengthy treatment of requests for the lifting of bank secrecy by judges and the subsequent provision of information by the banks concerned. A recommendation was issued to adopt suitable measures to facilitate the practical implementation of the standards on the lifting of bank secrecy. Delays in the lifting of bank secrecy were also observed in other cases where the procedure was regulated by court authorization upon request of the prosecutor. Such delays were not noted in one jurisdiction where judicial permission was not required, and additionally the law established the obligation of credit institutions to provide the information required. In another jurisdiction with bank secrecy rules in place, those rules did not in practice pose major difficulties and were limited by the duty to collaborate in accordance with the requirements of the public interest. This meant that banks and other financial institutions should facilitate access to data and precedents as required. In one case where bank secrecy rules were in place, the prosecutor's office had the authority, in investigations against civil servants for offences committed in the exercise of their functions, to order the disclosure of the suspect's current accounts and balances as a whole, and not only of specific transactions related to the issue under investigation. In one jurisdiction a recommendation was issued to address the requirement that permission of the Chairman of the Central Bank was needed for law enforcement agencies and judges, in practice, to obtain or seize bank, commercial or financial records from banks and other financial institutions. In one jurisdiction, legislation was pending that would establish a financial intelligence unit and a reporting regime for financial institutions, and also address bank secrecy issues.

2. In several jurisdictions previous convictions in another State could not be taken into account with regard to corruption offences, whereas such provisions existed in relation to other offences, such as money-laundering in two cases and trafficking in human beings, drug trafficking and acts of terrorism in another. In a few cases the article had been implemented by reference to other international legal instruments, such as the Riyadh Arab Agreement for Judicial Cooperation, the European Convention on the International Validity of Criminal Judgments and the convention on mutual assistance in criminal matters of the Community of Portuguese-speaking Countries. Additionally, in four cases, the verdicts of foreign courts could be taken into account as provided by international agreements. In some cases, the article had not been implemented or there were no laws or practice on criminal record.

3. Issues with regard to jurisdiction were noted in a few States parties that did not provide for extraterritorial jurisdiction in corruption matters. In one case, the

requirement of double criminality was applied to offences committed abroad by or against a national, but this general principle was not applicable in respect of active and passive bribery of national and foreign public officials and members of Parliament, and, additionally, the passive personality principle was limited by the requirement that the acts committed abroad be punishable by imprisonment of more than six months. In eight cases, the passive personality principle had not been established or was restricted or not clearly defined, while in five other cases both the active and passive personality principles were limited or had not been established. In 10 cases the State protection principle was limited or had not been established, and recommendations were issued accordingly. Nationals could be prosecuted only for offences committed abroad as permitted by existing treaties, in one case, and in another case on the basis of either a complaint by the victim or his or her legal successors or official denunciation by the authority of the country where the offence had been committed. Several States parties had established measures that prohibited the extradition of nationals or allowed such extradition only when applying international treaties and in accordance with the principle of reciprocity, as discussed further in the thematic reports on the implementation of chapter IV of the Convention (International cooperation) (CAC/COSP/2013/9 and CAC/COSP/2013/10).

Examples of the implementation of article 42

With respect to bribery, in one jurisdiction an extended active nationality principle covered all persons who had “a close connection” with the State party, including not only citizens but also individuals ordinarily resident in the country and bodies incorporated under domestic law (including the domestic subsidiaries of foreign companies).



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